Remarks Regarding Claim Amendments

Claims 2 to 15 are currently pending in the present application. Claim 9 has been canceled herein. Therefore, claims 2 to 8 and 10-15 will be pending after the current amendments are entered.

Claims 2 to 8, 10, and 12 have been amended herein to clearly indicate that the claims include the compounds described therein as well as pharmaceutically acceptable salts thereof. Present claim 11 has been amended herein to correct an obvious, typographical error. Support for the present amendments can be found in Applicants' originally-filed claims. As such, no new matter has been added by the present amendments.

Remarks Regarding Restriction Requirement

In a Restriction Requirement dated March 20, 2006, the Examiner has required restriction under 35 U.S.C. § 121 between:

1) Group I, comprising claims 2-11 in part, drawn to compound/compositions where X/Y/Z are all carbon; and R^4/R^6 are independent, classified in class 546, subclass 112.
2) Group II, comprising claims 2-11 in part, drawn to compounds/compositions where X/Y/Z are all carbon; and R^4/R^6 form formula Id, classified in class 546, subclass 81.
3) Group III, comprising claims 2-11 in part, drawn to compounds/compositions where one of X/Z is nitrogen; and R^4/R^6 are independent, classified in class 546, subclass 113.
4) Group IV, comprising claims 2-11 in part, drawn to compounds/compositions where one or both of X/Z is nitrogen; and R^4/R^6 form formula Id, classified in class 546, subclass 82.
5) Group V, comprising claims 2-11 in part, drawn to compounds/compositions where X/Z are both nitrogen; and R^4/R^6 are independent, classified in class 546, subclass 118.
6) Group VI, comprising claims 12-13, drawn to methods of inhibiting or modulating an enzyme activity of HIV or treating a disease mediated by HIV, classified in class 514, various subclasses.
7) Group VII, comprising claims 14-15 in part, drawn to methods of evaluating modulation of HIV integrase activity, classified in class 435, various subclasses.

The Examiner has also required an election of species if one of Groups I to V is elected for prosecution on the merits.

Applicants elect, with traverse, Group III, comprising claims 2 to 11 in part, drawn to compounds of Formula (I), and compositions comprising compounds of Formula (I), wherein one of X and Z is a nitrogen atom and R^4 and R^6 do not form a ring as in compounds of formula Id. Additionally, Applicants elect the species 1-(2,4-difluorobenzyl)-*N*-hydroxy-*N*-methyl-1*H*-pyrrolo[2,3-*c*]pyridine-5-carboxamide, Example 2 found on page 45 of Applicants' originally-filed specification, for prosecution on the merits. Present claims 2 to 5, 10, and 11 encompass the elected species.

Applicants traverse the present restriction requirement for the following reasons. First, the Examiner has not met their burden to show that examination of the entire scope of currently pending Markush claims 2 to 10 and composition claim 11 would represent a serious burden. For example, the Office Action indicates that the compounds of Groups I to V all fall within the same class, class 546, of the United States Patent Classification System. Furthermore, substituent Y in all of the present claims is a carbon atom. Here, the common structural motif among the compounds found in Groups I to V is a fused five-six ring system in which the constitution of the six-membered ring is fixed, and in the five-membered ring system Y is always carbon, and X and Y may be either carbon or nitrogen. Based on these choices, there are only 4 base ring systems possible. Further, the same substructure search would cover those compounds of formula Id as well, wherein R^4 and R^6 are joined to form a ring. Therefore, a general substructure search wherein substituents X and Z are either carbon or nitrogen would suffice to examine the entire scope of pending claims 2 to 11. As such, Applicants respectfully contend that such a search would not represent an undue burden on the Examiner.

Second, the Examiner's refusal to examine at least Markush claims 2 to 10 and composition claim 11 as a whole is improper and is in conflict with In re Haas II, 580 F.2d 461, 198 USPQ 334 (CCPA 1978) and In re Weber, 580 F.2d 455, 198 USPQ 328 (CCPA 1978). In particular, both of these cases prohibit the dividing of Markush claims into multiple applications where there is a common utility and structure related to that utility. The common structure of compounds found in Groups I to V is discussed above and the common utility, as discussed in Applicants' specification, is the inhibition of the HIV integrase enzyme. Therefore, since both the common utility and structural elements as discussed in Haas and Weber are present in claims 2 to 11, the Examiner should examine these claims as they are presently written and should not divide them into Groups I to V.

Applicants herein expressly reserve the right to prosecute non-elected subject matter in future applications.

Applicant respectfully requests entry of the foregoing amendments and allowance of the remaining claims.

Last, Applicants hereby petition for any required extension of time. Please charge all required fees to Deposit Account No. 500329.

Respectfully submitted,

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